COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE

WILLIAM L. WITHAM, JR.
DESIGNATED JUDGE

KENT COUNTY COURTHOUSE
414 FEDERAL STREET
DOVER, DELAWARE 19901
(302) 735-1942

Date Submitted: August 2, 2022
Date Decided: September 19, 2022

Zachary A. George, Esquire
Hudson Jones Jaywork & Fisher
225 South State Street
Dover, DE 19901

Gary E. Junge, Esquire
Schmittinger & Rodriguez, P.A.
414 South State Street
P.O. Box 497
Dover, DE 19901

RE: Allan Weinstein v. Steven Long
C.A. No. CPU5-20-001137

Dear Counsel:

On December 11, 2020, Allan Weinstein (hereinafter "Plaintiff") brought this action against Steven Long (hereinafter "Defendant"), Speedwerks, LLC, and Speedwerks Online, LLC alleging the parties entered into a contract whereby Plaintiff would provide professional accounting services to Defendant.[1] Plaintiff asserted he performed the services, but Defendant failed to make the agreed upon payment of $18,562.50. On January 28, 2021, Defendant filed an Answer conceding he entered into an agreement with Plaintiff, but denying any additional payment was due.[2] On May 16, 2022, a trial was held in the matter. This Court heard testimony from Plaintiff and Defendant. Both parties submitted their respective documents into evidence. This Court reserved its decision and instructed the parties to submit post trial memoranda.

[1] On January 28, 2021, Speedwerks, LLC and Speedwerks Online, LLC filed a Motion to Dismiss asserting it was not a party to the agreement in question. On May 17, 2021, this Court GRANTED the Motion to Dismiss, leaving Steven Long as the sole defendant in this matter.
[2] The Complaint demanded the Answer be supported by an affidavit of defense pursuant to 10 *Del. C.* § 3901; however, no affidavits were filed and the parties failed to pursue this, and as such, the Court will not address it.

I. FACTUAL BACKGROUND

Based on the testimony and evidence presented at trial, the Court finds the relevant facts to be as follows:

Plaintiff is a Certified Public Accountant operating out of the state of Maryland.[3] Defendant is the owner and operator of Speedwerks, LLC located in Delaware.[4] On July 22, 2019, the Internal Revenue Service (hereinafter "IRS") sent Defendant a letter by mail notifying him of his failure to file tax returns for the years 2015, 2016, 2017, and 2018.[5] On July 22, 2019, the IRS also sent Defendant a final notice by certified mail notifying him of his failure to pay federal tax for 2014.[6] After receiving these letters, an IRS officer visited him to notify him of his failure to pay federal taxes and to set a deadline to file. This placed Defendant in a state of panic, and he immediately contacted Plaintiff to retain his services. Defendant had retained Plaintiff's accounting services for 2009 and 2010. There was no discussion of cost nor an estimate at this time to retain Plaintiff's services. Plaintiff represented Defendant provided him with bank statements, pay stubs, and both open and unopened letters from the IRS to assist Plaintiff in the preparation of the tax returns.

Plaintiff notified Defendant he completed the tax returns, and on August 21, 2019, Defendant picked them up from Plaintiff in Maryland. Upon picking up the returns from Plaintiff, the parties entered into an agreement that stated Plaintiff prepared 2014 amended Federal tax returns and 2015, 2016, 2017, and 2018 Federal and State tax returns for Defendant in exchange for payment at an hourly billing rate of $150.00.[7] Further, the agreement stated in the event of

[3] Compl.
[4] Answer.
[5] Pl.'s Ex. 1.
[6] Pl.'s Ex. 2.
[7] Pl.'s Ex. 3.

breach, Defendant would be liable for unpaid charges subject to a "1 ½ % per month finance charge if not paid promptly," collection costs, and attorney fees.[8] Moreover, In addition to the agreement, Plaintiff provided Defendant with an invoice rendered in connection with the preparation of the 2014 Amended Federal income tax return and 2015, 2016, 2017, and 2018 Federal and State income tax returns.[9] The invoice indicated Plaintiff spent 123.75 hours at an hourly billing rate of $150.00 for a total of $18,562.50.[10] Defendant paid $4,000.00 towards the invoice, but Plaintiff received no other payment.

Defendant testified he was concerned he would go to jail if he did not comply with the IRS letters, so he contacted Plaintiff to prepare his 2015, 2016, 2017, and 2018 Federal and State income tax returns. Defendant testified he was not made aware of billing until he went to pick up the tax returns. Defendant testified he signed the agreement on August 21, 2019 without reading it. Further, he testified he would not have signed the document if he knew payment would be so much. Defendant testified he expected the bill to be consistent with the amount he paid in the past transaction with Plaintiff, which was around $3,000.00 or $4,000.00. There was no testimony as to whether prior work was done on an expedited basis. Thereafter, Defendant testified he had an anxiety attack when he saw the invoice. Moreover, he testified he believed the agreement was shady, and that he would have to sign the agreement and pay the invoice if he wanted the receive the returns.

Plaintiff testified he prepared Defendant's 2015, 2016, 2017, and 2018 Federal and State income tax returns. Plaintiff testified in addition to preparing the 2015, 2016, 2017, and 2018 Federal and State income tax returns, he amended the 2014 returns, which slightly changed

[8] *Id.*
[9] Pl.'s Ex. 4.
[10] *Id.*

Defendant's liability. Plaintiff testified when Defendant came to pick up the returns, they discussed the agreement at lengths for two hours in his office, and Defendant raised no questions or concerns prior to signing, nor did he express any shock. Plaintiff testified as a certified public accountant who has been running his own business for forty-five years, it is acceptable practice to prepare an engagement letter after the completion of his services when he can disclose the total number of hours worked. Further, Plaintiff testified Defendant was aware of his ballpark billing rate, as they did prior business. Moreover, Plaintiff testified Defendant was aware that if he wanted the returns done at a cheaper cost, Defendant would have had to summarize his own records. Plaintiff testified Defendant provided him with no records, and thus he had to make the records himself. Additionally, Plaintiff testified Defendant only paid $4,000.00 towards the $18,562.50 invoice.

II. LEGAL STANDARD

In civil actions, the burden of proof is by a preponderance of the evidence.[11] "The side on which the greater weight of the evidence is found is the side on which the preponderance of the evidence exists."[12] As trier of fact, the Court is the sole judge of the credibility of each fact witness and any other documents submitted to the Court for consideration.[13] If the Court finds that the evidence presented at trial conflicts, then it is the Court's duty to reconcile these conflicts—if reasonably possible—in order to find congruity.[14] If the Court is unable to harmonize the conflicting testimony, then the Court must determine which portions of the testimony deserve more weight in its final judgment.[15] In ruling, the Court may consider the witnesses' demeanor, the fairness and descriptiveness of their testimony, their ability to personally witness or know the facts

[11] *See Gregory v. Frazer,* 2010 WL 4262030, at *1 (Del. Com. Pl. Oct. 8, 2010).
[12] *See Reynolds v. Reynolds,* 237 A.2d 708, 711 (Del. 1967).
[13] *See Nat'l Grange Mut. Ins. Co. v. Davis,* 2000 WL 33275030, at *4 (Del. Com. Pl. Feb. 9, 2000).
[14] *See id.*
[15] *See id.*

about which they testify, and any biases or interests they may have concerning the nature of the case.[16]

III. DISCUSSION

Under Delaware law, to recover on a claim for breach of contract, the plaintiff must establish "(1) a contract exists between the parties; (2) the defendant breached the terms of the contract; and (3) as a result, the plaintiff suffered damages."[17] "When a party executes a contract which is effective on a prior date the party establishes its contractual obligations as of the prior date, it accepts the events which have occurred since that prior date."[18] "The acceptance of a contract may be implied from the acts and conduct of the party to whom the offer is made."[19] "An overt manifestation of assent, not a subjective intent, controls the formation of a contract."[20] The unexpressed subjective intention of a party is therefore irrelevant.[21] Acceptance of the consideration offered can be construed as an acceptance of the offer.[22]

"It will not do for a man to enter into a contract, and, when called upon to respond to its obligations, to say that he did not read it when he signed it, or did not know what it contained."[23] "If this were permitted, contracts would not be worth the paper on which they are written."[24] "A contractor must stand by the words of his contract; and, if he will not read what he signs, he alone is responsible for his omission."[25]

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[16] *See State v. Westfall,* 2008 WL 2855030, at *3 (Del. Com. Pl. Apr. 22, 2008).
[17] *Citibank (S. Dakota) N.A. v. Santiago*, 2012 WL 592873, at *1 (Del. Com. Pl. Feb. 23, 2012) (citing to *VLIW Tech., LLC v. Hewlett–Packard Co. STMicroelectronics, Inc.,* 840 A.2d 606, 612 (Del.2003)).
[18] *Sweetman v. Strescon Industries, Inc.,* Del. Super., 389 A.2d 1319, 1322 (1978).
[19] *Montray Realty Co. v. Arthurs,* 30 Del. (7 Boyce) 168, 105 A. 183 (Del.1918).
[20] *Acierno v. Worthy Bros. Pipeline Corp.*, 693 A.2d 1066, 1070 (Del.1997) (citing *"Industrial America", Inc. v. Pulton Industries, Inc.*, 285 A.2d 412, 415 (1971)).
[21] *Price v. State Farm Mut. Auto. Ins. Co.*, 2013 WL 1213292, at *6 (Del. Super. Ct. Mar. 15, 2013), aff'd, 77 A.3d 272 (Del. 2013).
[22] *Id.* (citing *Montray Realty Co. v. Arthurs*, 30 Del. 168, 105 A. 183 (1918)).
[23] *Pellaton v. Bank of New York*, 592 A.2d 477 (Del.1991) (quoting *Upton, Assignee v. Tribilcock,* 91 U.S. 45, 50 (1875)).
[24] *Id.*
[25] *Id.*

It is clear and the record supports a finding that a contract existed between the parties. Defendant requested that Plaintiff prepare back Federal and State income tax returns for the years 2015, 2016, 2017, and 2018. In addition to preparing tax returns for the aforementioned years, Plaintiff felt it was necessary to amend Defendant's 2014 tax returns, ultimately changing Defendant's liability. When Defendant traveled to Maryland to pick up the returns, Plaintiff presented him with a written agreement that memorialized their oral agreement. This agreement indicated Plaintiff also amended Defendant's 2014 tax returns. Further, the agreement indicated Defendant would be liable for collection costs, attorney fees, and interest should Defendant breach the agreement. Both Plaintiff and Defendant are two businessmen who were aware of their actions when they entered into the agreement. The evidence and testimony presented at trial reveals Defendant voluntarily signed this agreement. While Defendant would have this Court believe he was in distress, he created the stress and gave Plaintiff limited time to prepare the tax returns.

In weighing the credibility of the witnesses, the Court finds Defendant's testimony conflicting with respect to the circumstances under which he signed the agreement. Specifically, Defendant testified he signed the agreement without reading it. Thereafter, Defendant offered conflicting testimony that he found the agreement to be shady, but signed it to receive the tax returns. The Court finds Plaintiff's recitation of the facts more credible. Defendant accepted the terms of the written agreement when he voluntarily signed it and accepted the tax returns.

Furthermore, this Court finds Plaintiff's hourly rate reasonable and foreseeable, as there existed a prior course of dealings between the parties where Plaintiff charged Defendant $130.00 to perform tax returns in 2009 and 2010. When Defendant retained Plaintiff's accounting services in 2019, he was aware Plaintiff had an hourly rate. He was also aware ten years had passed since he last acquired Plaintiff's services, and his hourly rate was subject to increase. Moreover,

Defendant knew he was presenting Plaintiff with several years of tax returns to prepare in a short period of time, with no summarized records to reduce the cost. Additionally, Defendant did not contest the work or amount of time spent Plaintiff spent preparing the tax returns. Notably, Defendant offered no expert testimony to counter Plaintiff's use of the agreement or the billing; therefore, this Court will accept Plaintiff's credible testimony as reasonable.

In addition to finding a contract existed between the parties, the Court finds Defendant breached the contract and Plaintiff suffered damages as a result. Defendant agreed to pay Plaintiff $18,562.50, but only paid $4,000.00. As a result of Defendant's breach, Plaintiff suffered damages in the amount of $14,562.50. In addition to the aforementioned unpaid balance, Defendant agreed to be liable for collection costs, attorney fees, and interest in the event of breach. This Court finds Plaintiff did not offer sufficient testimony or evidence regarding collection costs; thus, collection costs will not be awarded. Moreover, the agreement stated interest would begin to run if the balance was "not paid promptly." This Court finds such language neglects to specify when interest in the event of breach would begin to run. Therefore, while the Court will award interest to Plaintiff, interest will not begin to run until December 11, 2020 or the date the Complaint was filed in this Court.

IV. CONCLUSION

For the reasons set forth herein, the Court finds in favor of Plaintiff. The Plaintiff must submit a conforming order and an affidavit for reasonable attorney fees.

IT IS SO ORDERED.

The Honorable William L. Witham, Jr.[26]

[26] In accordance with the Delaware Supreme Court's Order of Designation signed by the Honorable Chief Justice Collins J. Seitz, Jr. on September 21, 2021, the Honorable William L. Witham, Jr. is designated to sit temporarily in the Court of Common Pleas to exercise all powers and authority of a Judge. Order renewed on April 13, 2022.